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BRINKS, HOFER, GILSON & LIONE  
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CHICAGO, IL 60610

EXAMINER
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BOUTAH, ALINA A

ART UNIT	PAPER NUMBER
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2143

MAIL DATE	DELIVERY MODE
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05/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/587,236

**Applicant(s)**

THOMAS ET AL.

**Examiner**

Alina N Boutah

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,12-15,17,18,20,22,29,31 and 32 is/are pending in the application.

4a) Of the above claim(s) 22 is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

- 6) ☒ Claim(s) 1,2,4-10,12-15,17,18,20,29,31 and 32 is/are rejected.

- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of claims 1, 2, 4-10, 12-15, 17, 18, 20, 29, 31 and 32 in the reply filed on February 20, 2007 is acknowledged. Applicant is reminded that the withdrawn claim 22 must be cancelled upon allowance of the application.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 2, 4-10, 12-15, 17, 18, 20, 29, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,796,952 issued to Davis et al. (hereafter referred to as Davis) in view of USPN 6,606,657 issued to Zilberstein et al. (hereinafter referred to as Zilberstein).

Regarding claim 1, Davis teaches a system for monitoring usage of an electronic device comprising:

a client component installed in a client device, said client component including a profile builder to generate a monitoring profile using a profile database, said client component being operative to monitor usage of said client device in accordance with the monitoring profile and to

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generate corresponding usage (figure 3; col. 2, lines 12-20; col. 4, lines 24-32; col. 4, line 64 to col. 5, line 3; col. 4, lines 43-45; col. 11, lines 59-65); and

a server component including the profile database, the server component being installed on a server device in communication with said client device, for receiving said usage data from said client device (figure 4; Abstract; col. 4, lines 24-32, line 64 to col. 5, line 3; col. 5, lines 43-45);

wherein said monitoring profile includes information specifying which application programs, which are not a part of the system for monitoring usage, and which features of said application programs, installed on said client device are to be monitored by said client component (abstract, figures 3-7, col. 4, lines 45-53, col. 5, lines 4-13, lines 35-56).

However, Davis does not explicitly teach monitoring usage during usage of said client device, the server component constructing an in-memory model of said usage of said client while the usage continues, and the server component further storing said usage data in a relational data store.

Zilberstein teaches monitoring usage of a client device in real-time and the server component further storing said usage data in a relational data store (col. 3, lines 1-9; and figure 4). At the time the invention was made, one of ordinary skill in the art would have been motivated to monitor usage of an electronic device in real time in order to allow users access information regarding the usage instantaneously, therefore facilitating the system maintenance.

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Regarding claim 2, Davis teaches the system of claim 1 further including a data management component disposed to store said monitoring profile and to store said usage data provided to said server device (col. 4, line 63 to col. 5, line 3).

Regarding claim 4, Davis teaches the system of claim 1 further including a profile management component for creating said monitoring profile, said monitoring profile including a plurality of application profiles each associated with one of said application programs (col. 5, lines 35-44).

Regarding claim 5, Davis teaches the system of claim 1 further including a data analysis component for, based upon said usage data, determining usage statistics associated with application program installed on said client device wherein said usage statistics include measurements of usage time, number of uses, and sequence of usage of specified ones of said application programs (col. 4, lines 13-15, 25-32, 41-53).

Regarding claim 6, Davis teaches the system of claim 1 further including a profile management component for creating and editing said monitoring profile, said monitoring profile specifying which application programs installed on said client device are to be monitored and a frequency with which said usage data is to be reported to said server component (col. 4, line 64 to col. 5, line 3).

Regarding claim 7, Davis teaches the system of claim 6 wherein said profile management component allows for definition of a set of users of said client device to be monitored in accordance with said monitoring profile (Abstract).

Regarding claim 8, Davis teaches the system of claim 1 wherein said client component includes a client monitoring agent for collecting said usage data in accordance with said monitoring profile and for providing said usage data to said server component, said client component further including a client service for requesting said monitoring profile from said server component and for starting said client monitoring agent upon receipt of said monitoring profile from said server component (figure 3; Abstract; col. 4, line 3 to col. 5, line 55).

Claim 9 is similar to claim 1 except there are a plurality of client components installed on a plurality of client computers, therefore is similarly rejected under the same rationale (figures 1 and 4; Abstract; col. 4, line 3 to col. 5, line 55).

Regarding claim 10, Davis teaches the system of claim 9 further including a data management component disposed to store said monitoring profiles and to store said usage data provided to said server component from each of said client components (figure 3).

Regarding claim 12, Davis teaches the system of claim 10 further including a profile management component for creating each of said monitoring profiles that each of said

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monitoring profiles includes a plurality of application profiles, each of said application profiles being associated with one of said associated application programs (figure 6).

Regarding claim 13, Davis teaches the system of claim 9 further including a profile management component for creating each of said monitoring profiles and for specifying which of said monitoring profiles will be applicable to usage of said client computers by particular users (figure 6).

Regarding claim 14, Davis teaches a method for monitoring computer usage comprising the steps of:

generating respective monitoring profiles for one or more client computers (figure 3; col. 2, lines 12-20; col. 4, lines 24-32; col. 11, lines 59-65);

using a respective monitoring profile, monitoring usage of each of a plurality of client computers of the one or more client computers (Abstract; figures 1 and 3; col. 2, lines 12-20; col. 4, lines 24-32; col. 11, lines 59-65), wherein each respective monitoring profile includes information specifying which application programs other than the monitoring profile, and which features of said application programs, installed on said client device are to be monitored by said client component (abstract, figures 3-7, col. 4, lines 45-53, col. 5, lines 35-56);

generating usage data based upon said monitoring and providing said usage data to a server computer (figure 4; Abstract; col. 4, lines 24-32, line 64 to col. 5, line 3; col. 5, lines 43-45); and

transmitting said monitoring profiles to said client components from said server computer (Abstract; figures 1 and 3; col. 4, line 3 to col. 5, line 55).

However, Davis does not explicitly teach monitoring usage during usage of said client device, the server component constructing an in-memory model of said usage of said client while the usage continues, and the server component further storing said usage data in a relational data store.

Zilberstein teaches monitoring usage of a client device in real-time and the server component further storing said usage data in a relational data store (col. 3, lines 1-9; and figure 4). At the time the invention was made, one of ordinary skill in the art would have been motivated to monitor usage of an electronic device in real time in order to allow users access information regarding the usage instantaneously, therefore facilitating the system maintenance.

Regarding claim 15, Davis teaches the method of claim 14 further including the step of storing said monitoring profiles remote from said client computers, and the step of storing said usage data provided to said server component from each of said client components (figure 4).

Regarding claim 17, this is similar to claim 14, therefore is rejected under the same rationale.

Regarding claim 18, this is similar to claim 7, therefore is rejected under the same rationale.



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Regarding claim 20, Davis teaches the method of claim 14 further including the step of monitoring usage statistics for specified features of said application programs via predefined application programming interfaces of said application programs (col. 4, lines 13-15, 25-32, 41-53).

Regarding claim 29, Davis teaches the system of claim 1 wherein said client component includes means for monitoring usage statistics for specified features of said application programs via predefined application programming interfaces of said application programs (col. 3, lines 4-14).

Regarding claims 31 and 32, although Davis does not explicitly teach the system of claim 1 wherein the client component comprises a hooks dynamic linked library injected into one or more application programs activated by a user, it is well known in the computing art (particularly programming) that in order to execute a program, a procedure must be called on. In this case, a dynamic link library or DLL as claimed.

### ***Response to Arguments***

Applicant's arguments filed October 26, 2007 have been fully considered but they are not persuasive.

In response to Applicant's argument that Davis fails to teach "a client component... including a profile builder to generate a monitoring profile using a profile database... and a server component including the profile database," specifically, Davis fails to teach such a profile

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building on a client component which uses a profile database of a server component, the PTO respectfully disagrees and submits that this is taught by Davis as cited above. Specifically, col. 4, line 64 to col. 5, line 3 as well as lines 43-45 clearly states that the acquired information is stored in a client profile database on a server and used to build historical profile of individual users.

Besides, the claim plainly states "said client component including a profile builder to generate a monitoring profile using a profile database." This does not necessarily mean that the client uses the profile database of the server.

In response to Applicant's argument that Davis teaches the usage of network resources and not usage of said client, col. 4, lines 37-54, for example teaches a tracking program that is downloaded from a server to a client. The tracking program runs on the client and monitors various indicia such as elapsed time, mouse events, keyboard event, and the like in order to track user's interaction. The indicia can be interpreted as a client usage.

In response to Applicant's argument that Davis does not teach "application programs, which are not a part of the system for monitoring usage and which features of said application programs, installed on said client device are to be monitored by said client component," the PTO respectfully submits that this feature is taught by Davis as cited above. In addition to monitoring indicia such as time elapse, etc, as disclosed in col. 4, lines 40-55, and as admitted by Applicant in the remark, col. 5, lines 3-13, for example, discloses the tracking program may monitor use of and interaction with any of the resources downloaded from a server, including an executable program, a database file, an interactive game, a multimedia application and the like. The programs are not part of the system for monitoring the usage. The claim language is broad and vague, thus allowing multiple interpretations.

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In response to Applicant's argument that Zilberstein does not teach constructing an in-memory model of said usage of said client while the usage continues, Applicant is reminded that this is a rejected based on a combination of two references. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Davis in view of Zilberstein teaches this limitation. Specifically, Davis teaches tracking a client's usage while interacting with web pages (col. 11, lines 13-33).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*ANB*

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